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Health and Safety in Schools – Separating the Myths from the Reality.

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Laws on health and safety, including the Health and Safety and Work Act 1974 and the Management of Health and Safety at Work Regulations 1999, apply to schools in the same way as to any other workplace. The risks are, however, somewhat different, as children are naturally more likely to suffer injury through an accident, since they lack the maturity to foresee the potential hazards involved in their everyday activities, and risk-assessment must therefore be the responsibility of head-teachers and governors. This can result in the seemingly over-the-top kind of decisions which make headlines in local newspapers and in the tabloid press. The Health and Safety Executive (HSE), to which such decisions are often referred, is required to rule on whether or not they involve a genuine risk to health and safety, or are simply an attempt to prevent *all* possible risks, however improbable. The decisions of the HSE are well-documented on the 'myth-buster' section of its website, but, as humorous and excessive as these often appear to be, there is a darker, more serious side to the issue of health and safety within schools, and more especially when school trips are involved and safety is less within the control of the school.

Local authorities continue to fund and govern many state schools. (The governance of academies is slightly different and is not considered here.) Tortious liability of the local authority towards pupils in state schools is well-established. For example, in the early case of *Smith v Martin and Kingston upon Hull Corporation* [1911] 2 KB 775, the education authority was found vicariously liable when a pupil suffered severe injury after being instructed by her teacher to tackle a fire. Although the duty is currently substantially covered by statute, the common law duty of care owed by local authorities and their employees in relation to the care and supervision of pupils has formed the basis of action in several cases. These cases have highlighted the need for adequate supervision of pupils in school (*Palmer v Cornwall CC* [2009] EWCA Civ 456), the need to avoid injury during supervised activities (*Wright v Cheshire County Council* [1952] 2 All ER 789, CA), and the responsibility for maintaining safe premises (*Woodward v Hastings Corporation* [1945] KB 174, CA).

A local authority may be sued in negligence if the school has not taken care of the child in a way that a prudent parent would have done. If, as a result of such action, the child is

injured and this was a reasonably foreseeable consequence, the local authority may be liable. In *Kearn-Price v Kent County Council* [2002] EWCA Civ 1539, a pupil was struck in the eye by a full-size leather football while standing in the playground of his school during the pre-school period. He lost the sight in one eye as a result and sued the defendant local authority in negligence. The Court of Appeal agreed with the first instance judge that the defendant was liable for failing to show such care as was reasonable in all the circumstances.

In *Simonds v Isle of Wight Council* [2003] EWHC 2302 (QB), a five-year old child jumped from a swing during his school's sports day which was held at a nearby playing field, breaking his arm in the process. At first instance, the court found the council to be liable for the negligence of the school staff, but the Court of Appeal disagreed, saying that there had been adequate staff supervision during the event and that this could be no more than an unfortunate accident. The judge took a practical approach, saying that if word got round that a school could be liable in such cases, 'such events would become uninsurable or only insurable at prohibitive cost'.

Risks are a fact of life. We take risks every day, but they are usually calculated risks. In schools, where there are vulnerable children who are unable to make those calculations and are therefore more likely to suffer accidents, it is the staff, the adults who are in *loco parentis*, who must assess the potential risks and take the decisions on behalf of the children. However, some examples of cases referred to the HSE demonstrate how the level of risk is often overestimated by head-teachers and governors, or simply used as an excuse to impose an arbitrary rule.

Case 70 - This school banned the use of yo-yos in the playground. The HSE ruled that there was no health and safety law which banned the use of yo-yos and, while recognising that there was a minimal risk of injury, described the ban as a disproportionate response.

Case 74 – This secondary school banned a child from pushing a wheelchair because he had not received appropriate training to do so. The HSE again ruled that there was no health and safety law preventing students from pushing wheelchairs.

Case 75 – A Chair of Governors at a primary school received conflicting advice on the construction of a pond at a primary school. The HSE confirmed that there was no law against building a pond in school grounds, but that there may issues of civil liability if a trespasser were to be injured in the pond.

Case 327 – A school head-teacher banned staff from taking drinks – hot or cold – into the playground whilst on duty. Improbable reasons were given such as a child suffering an allergic reaction when coming into contact with the drink! The HSE concluded that ‘if the head wanted to impose ridiculous rules on staff, he/she should not use health and safety as a convenient cover.’

Case 197 – A school sports day was cancelled due to morning dew on the grass which could have caused children to slip and fall. The HSE called this a ‘disproportionate response’ which could have been dealt with by taking simple precautions such as delaying the start time.

Case 281 – a school proposed a ban on children bringing fruit or rice-cakes into school for a snack in case another child suffered an allergic reaction to the foods. The HSE said that the school should have a policy to manage allergy risks, but should not use ‘health and safety’ as a reason for justifying a disproportionate ban on all snacks.

The Department for Education (DfE) produces some useful guidance on the legal duties relating to health and safety in schools, partly in response to the over-reaction to potential legal claims which has helped to create an unduly risk-averse climate in schools and sixth-form colleges. The employer, who will have public liability insurance, must carry out risk assessments and then manage those risks which have been identified. Management of risk should be sensible and proportionate. Activities taking place away from the school normally present a higher level of risk and a thorough risk assessment should be undertaken, or at least a review of one carried out previously for a similar activity. The HSE produce further guidance in its policy statement which encourages schools and local authorities to focus on genuine risks and not to be over-cautious: *School trips and outdoor learning activities: Tackling the health and safety myths*. The key issue is to prevent what are preventable accidents, such as the tragic fatal drowning of a 10 year-old child, Max Palmer, at Glenridding Beck in Cumbria in 2002. The party leader, Paul Ellis, pleaded guilty to manslaughter and was given a one-year prison sentence.

Sadly, deaths and serious injury are not unknown on school trips. Rochelle Cauvet, aged 14 and Hannah Black, aged 13, were drowned while on a ‘river walk’ in North Yorkshire in 2000. Joseph Lister died during a potholing trip in North Yorkshire in 2005. Paddy Dear was found dead at the bottom of cliffs in March 2016 while attending a field trip to a study centre in Pembrokeshire. Jessica Lawson, aged 16, drowned on a school trip in France in

July 2016. As tragic as these events are, when put into context, there are approximately 7-10 million pupil-visits each year, and occurrences such as these are very rare. Nevertheless, errors of judgement, shortcomings in checking procedures and a breakdown in communication combined to bring about the most recent tragic event, and schools should be able to take some very valuable lessons from similar experiences.

Head-teachers will be very aware of unfortunate cases such as those resulting in the death of a pupil, and will be anxious to avoid both the human and the financial costs of a finding of negligence or even criminal liability under the health and safety legislation. Nevertheless, banning playing with harmless toys such as yo-yos, or the eating of fruit in case a fellow pupil is allergic, demonstrates an over-cautious approach to the smallest of risks. Children need to learn to manage small risks themselves, in a safe and controlled manner, and will derive no long-term benefit from being wrapped in cotton wool while in a school environment.